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CABINET AFFAIRS STAFFING MEMORANDUM

Date: 8/17/84 Number: ----- Due By: -----

Subject: Minutes of the Cabinet Council on Commerce and Trade

July 12, 17, 1984

ALL CABINET MEMBERS	Action	FYI		Action	FYI
Vice President	<input type="checkbox"/>	<input checked="" type="checkbox"/>	CEA	<input type="checkbox"/>	<input checked="" type="checkbox"/>
State	<input type="checkbox"/>	<input type="checkbox"/>	CEQ	<input type="checkbox"/>	<input type="checkbox"/>
Treasury	<input type="checkbox"/>	<input type="checkbox"/>	OSTP	<input type="checkbox"/>	<input type="checkbox"/>
Defense	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Attorney General	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Interior	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input type="checkbox"/>	<input type="checkbox"/>	Baker	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Commerce	<input type="checkbox"/>	<input type="checkbox"/>	Deaver	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Labor	<input type="checkbox"/>	<input type="checkbox"/>	Darman (For WH Staffing)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HHS	<input type="checkbox"/>	<input type="checkbox"/>	McFarlane	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HUD	<input type="checkbox"/>	<input type="checkbox"/>	Svahn	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Transportation	<input type="checkbox"/>	<input type="checkbox"/>	Chapman	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Energy	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Education	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Counsellor	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
OMB	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
<u>CIA</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
UN	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
USTR	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
GSA	<input type="checkbox"/>	<input type="checkbox"/>	Executive Secretary for:		
EPA	<input type="checkbox"/>	<input type="checkbox"/>	CCCT	<input type="checkbox"/>	<input checked="" type="checkbox"/>
NASA	<input type="checkbox"/>	<input type="checkbox"/>	CCEA	<input type="checkbox"/>	<input checked="" type="checkbox"/>
OPM	<input type="checkbox"/>	<input type="checkbox"/>	CCFA	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VA	<input type="checkbox"/>	<input type="checkbox"/>	CCHR	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SBA	<input type="checkbox"/>	<input type="checkbox"/>	CCLP	<input type="checkbox"/>	<input checked="" type="checkbox"/>
			CCMA	<input type="checkbox"/>	<input checked="" type="checkbox"/>
			CCNRE	<input type="checkbox"/>	<input checked="" type="checkbox"/>

REMARKS: Attached for your information are the minutes of the following meetings of the Cabinet Council on Commerce and Trade:

July 12, 1984

July 17, 1984

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SA/IA

C/TTAC

RETURN TO:

☐ Craig L. Fuller

Assistant to the President

☐ Don Clarey☐ Tom Gibson☒ Larry Herbolsheimer

Associate Director

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MINUTES
CABINET COUNCIL ON COMMERCE AND TRADE

July 17, 1984

3:00 p.m.

Cabinet Room

Attendees: The President, The Vice President, Messrs. Baldrige, Regan, Weinberger, Smith, Clark, Block, Hodel, Meese, Brock, Svahn, Fuller, McFarlane, Oglesby, Speakes, Verstandig, Porter, Wright, Ford, Keyworth, McMahon, Niskanen, Schneider, Baroody, Beggs, Cicconi, Cribb, Donatelli, Evans, Fitzwater, Herbolsheimer, Rhodes, Rye, and Li, Ms. Dole and Ms. Noonan.

1. Commercial Use of Space

Secretary Baldrige introduced the meeting by noting that a Cabinet Council on Commerce and Trade (CCCT) working group had reviewed a set of policy initiatives designed to encourage space commercialization. The policy initiatives were in four areas: (1) economic initiatives; (2) legal and regulatory initiatives; (3) research and development initiatives; and (4) initiatives to establish and implement a commercial space policy.

Mr. Fuller outlined the background of the Commercial Space Working Group. About a year ago, interest developed in how the government could facilitate private sector investment in space commercialization. A number of firms expressed strong interest, including not only large aerospace companies and banks, but also small companies. The Cabinet Council established a Commercial Space Working Group to review ideas proposed by the industry.

Mr. Evans, chairman of the Working Group, presented the Group's recommendations. He explained that the economic initiatives are designed to change or eliminate tax laws and regulations that discriminate against commercial space ventures. For example, spacecraft investments are not eligible for the investment tax credit in part because spacecraft are considered to be used predominantly outside the United States.

The legal and regulatory initiatives are designed first, to make government more efficient in making timely decisions, and second, to assure that space ventures are treated equitably, e.g., by protecting proprietary information adequately and by providing access to foreign markets equal to that provided to foreign companies in the U.S. market.

The research and development initiatives are designed to encourage investment in space research and development.

Minutes
Cabinet Council on Commerce and Trade
July 17, 1984
Page 2

The initiatives to establish and implement a commercial space policy are designed to promote consistent government actions and policies in the long-term. Because many commercial space projects require long lead times, entrepreneurs need to be assured that government policies will remain consistent in order to make investments in space commercialization.

Mr. Evans also outlined several issues that the Working Group recommended for further study, in particular, reasonably-priced access to the Shuttle.

Council members noted that the Department of State would like to work out with the Department of Transportation the issue of munitions control. The Departments of State and Defense would be included in any new regulatory arrangement.

The Council decided to establish a high-level national focus for commercial space issues by creating a CCCT Working Group on the Commercial Use of Space. The Working Group will be chaired by a representative of the Department of Commerce with a representative of the National Aeronautics and Space Administration (NASA) serving as vice chairman. Membership will consist of all interested departments and agencies. The Assistant to the President for National Security Affairs and the Assistant to the President for Cabinet Affairs will oversee the development of a memorandum of understanding clarifying the coordination process between the SIG/Space and the CCCT Working Group on the Commercial Use of Space.

The Council also discussed the budgetary implications of the commercialization initiatives. The Office of Management and Budget noted that NASA had already agreed to a growth schedule for the next five years.

MINUTES
CABINET COUNCIL ON COMMERCE AND TRADE

July 12, 1984
2:00 p.m.
Room 208 OEOB

Attendees: Messrs. Baldrige, Block, Hodel, Brock, Porter, Wright, Wallis, Burnley, Ford, Jones, Niskanen, Ballentine, Clegg, Goldstein, Herbolzheimer, Jones, Kirk, Margulies, McMinn, Milbergs, Neal, Platt, Wethington, and Li, Ms. Horner.

1. Recommendations of the President's Commission on Industrial Competitiveness

Mr. Porter presented a report from the Working Group on Industrial Competitiveness, which reviewed the recommendations of the President's Commission on Industrial Competitiveness. In general, the Commission recommendations are similar to Administration legislative proposals and are consistent with the Administration's program.

The first recommendation is to modify the antitrust laws to permit procompetitive joint research and development (R&D) ventures. This recommendation is consistent with legislation proposed by the President in September 1983 that would encourage procompetitive joint R&D ventures by requiring that courts consider such ventures under the rule of reason standard and reducing the liability for such ventures from treble to actual damages. In April, the House passed a version similar to the Administration's proposal by 417 to 0. The President's bill has been reported out of the Senate Judiciary Committee and is pending floor consideration.

The second recommendation is to make permanent the incremental tax credit for research and experimentation (R&E), broaden the definition of R&E to make it consistent with generally accepted accounting principles, and adopt other measures to encourage industry investment in university research. These recommendations were helpful to the Administration in developing its position on the R&E tax credit recently presented in congressional testimony.

While the Commission and the Administration share the same objectives on this issue, there are some differences on specific provisions. The Commission recommended making the credit permanent, while the Administration has supported a three-year extension of the credit. The Commission recommended that all, rather than incremental, R&E

Minutes
Cabinet Council on Commerce and Trade
July 12, 1984
Page 2

expenditures qualify for the credit, while the Administration has supported retaining the incremental feature of the credit.

Council members discussed how the credit may discriminate against companies which maintain high levels of investment in research but do not significantly increase their incremental expenditures. The Council requested the Cabinet Council on Economic Affairs Working Group on Research and Development Tax Policy to consider how the incremental feature of the credit could be structured to reward companies which make large stable investments in R&E.

The Commission's third recommendation is to make counterfeiting trademarks a criminal offense and implement an international anti-counterfeiting code. In April 1984, the Cabinet Council on Commerce and Trade strongly endorsed an aggressive attack on trademark counterfeiting. The Administration has supported legislation that would strengthen criminal and civil sanctions against commercial counterfeiting.

The fourth recommendation is to amend the Freedom of Information Act to protect the rights of private firms to maintain the confidentiality of commercially sensitive information. Mr. Porter noted that this issue would be addressed in the second agenda item.

The fifth recommendation is to restore patent life lost during the government regulatory review process. The Administration testified in support of the Patent Term Restoration Act of 1983, which represents a compromise between the research-intensive and the production-intensive sectors of the pharmaceutical industry. It would: (1) extend the effective patent term that has been eroded by Federal premarket regulatory review; and (2) provide for approval of Abbreviated New Drug Applications.

The sixth recommendation is to streamline a variety of patent laws and procedures to encourage more investment in research and innovation. The Administration testified earlier this year in support of these changes.

The seventh recommendation is to examine the feasibility of establishing a central government data bank for providing market information to help small- and medium-sized U.S. firms identify market opportunities abroad. When this recommendation was considered by the Cabinet Council in March, the Council agreed to ask the Department of Commerce to study the feasibility of establishing a data bank. The Department will report its findings in September to the Working Group for its review.

The eighth recommendation is to make clear that the Congress,

Cabinet Council on Commerce and Trade

July 12, 1984

Page 3

in reauthorizing the Export Administration Act, should weigh carefully the need to maintain industrial competitiveness, as well as national security. The Commission also recommended that the Administration develop export control policies along the principles outlined by The Business Group on the Export Administration Act.

Council members noted that most, if not all, of the specific provisions outlined by The Business Group are inconsistent with recent decisions by the President on the Export Administration Act. The Council agreed to accept the generic recommendation and note that the Administration has already taken positions on the specific issues addressed by The Business Group.

The ninth recommendation is to replace the Domestic Sales Corporation tax incentive with the Foreign Sales Corporation (FSC) incentive. This recommendation was enacted when the Congress has adopted the Administration's FSC proposal in the Deficit Reduction Act of 1984.

The tenth recommendation is to make several technical changes in the trade law dealing with countervailing duty (CVD) and antidumping investigations. The Council supported the generic concept of improving the CVD and antidumping investigation process. Specifically, it supported permitting parallel CVD and antidumping investigations dealing with the same products to be carried out concurrently. It also supported permitting joint petitioners to have standing to file CVD and antidumping requests for investigations so that a coalition of firms, unions, and trade associations may file together. Council members, however, agreed that clarification of the phrase "threat of injury" should not result in an expansion of the definition.

The eleventh recommendation is to encourage cooperative efforts by labor and management that increase trust, open communication, and worker participation. The Council endorsed this recommendation.

The twelfth recommendation is to improve engineering education through creating or expanding programs for providing stipends to graduate students, funding research equipment and instrumentation, and developing engineering research centers. The Council supported the need to improve engineering education within the budget constraints contained in the FY1985 budget. The National Science Foundation has recently initiated programs that provide support for young engineering faculty, fund research equipment and instrumentation, and develop on-campus, cross-disciplinary, engineering research centers.

The thirteenth recommendation is to encourage Federal Government and private sector partnerships to provide

Minutes

Cabinet Council on Commerce and Trade

July 12, 1984

Page 4

integrated services to high schools for reducing the high dropout rate. The Working Group on Industrial Competitiveness noted that the Department of Education has recently instituted a number of programs designed to encourage increased cooperation between the private sector and schools. The Department of Education has announced it will establish a task force to encourage and facilitate such partnerships and the Department of Justice has agreed to provide some funding.

The fourteenth recommendation is to facilitate the use of effective software in elementary and secondary education by supporting software research and teacher training in computers. The Council supported this recommendation, noting that the Department of Education has recently undertaken a number of programs supporting computer literacy.

The Council asked Messrs. Porter and Milbergs to prepare a letter to the Commission chairman outlining the Cabinet Council's action on these recommendations.

2. Report of the Working Group on Intellectual Property:
Amendments to the Freedom of Information Act

Mr. Kirk presented a report from the Working Group on Intellectual Property regarding amendments to the Freedom of Information Act (FOIA). FOIA exempted certain categories of information from the obligation to make information available to the public. The Commission recommended strengthening Exemption 4 of the Act, which was designed to protect legitimate confidentiality interests of the private sector by exempting trade secrets and confidential or financial information from mandatory disclosure requirements. Judicial decisions have eroded the substantive protections Congress sought in enacting Exemption 4 by prohibiting use of the exemption more frequently than in the past.

The Department of Justice conducted an in-depth study of the FOIA and proposed a comprehensive set of revisions to the FOIA. However, the Senate Judiciary Committee deleted the substantive reforms of Exemption 4 in its consideration of the legislation. The House Committee on Government Operations has held three hearings on this issue and is scheduled to hold another hearing in August.

The Working Group recommended, and the Council agreed, that since prompt reform of the FOIA is essential and although substantive reforms of Exemption 4 may be desirable, those reforms should not be pursued now if they would jeopardize the overall FOIA reforms.

3. Report of the Working Group on Intellectual Property:
Ratification of the Brussels Satellite Convention

Minutes

Cabinet Council on Commerce and Trade

July 12, 1984

Page 5

Mr. Kirk presented a report from the Working Group on Intellectual Property, which recommended that the Administration transmit to the Senate for advice and consent ratification of the Brussels Satellite Convention.

Some U.S. domestic satellites send signals that can reach the Caribbean, Latin America, Mexico, and Canada. There has recently been a rise in unauthorized interception of signals carried by communications satellites in a number of Caribbean countries.

In 1974, the World Intellectual Property Organization concluded the Brussels Satellite Convention. Member States of the Convention pledge to take measures to prevent distribution of signals by distributors who receive signals without authorization. Members can implement their pledges in any way they see fit. There are exemptions for some uses, such as educational ones.

In the last few years, a variety of groups in the U.S. have expressed strong support for U.S. ratification of the Convention because of, inter alia, increased use of satellites for programming delivery and widespread unauthorized international interception of U.S. program-carrying satellite signals. The only concern raised has been about the legal situation governing home television. The Department of State and other agencies believe that the Convention should not affect this situation.

The Working Group noted that sales of motion pictures abroad exceed \$1 billion a year, that poaching has become a serious problem in the Caribbean, and that several key Senators have asked the Administration to forward the Convention to the Senate for advice and consent. The Cabinet Council agreed to recommend prompt transmission of the Convention to the Senate.